

RICHARD W. CAHOON FAMILY LIMITED PARTNERSHIP

IBLA 97-155

Decided July 10, 1997

Appeal from a Decision of the Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 51326; N MC 51335 through N MC 51339; N MC 51343 through N MC 51346; N MC 352838; N MC 352885 through N MC 352887; N MC 352890 through N MC 352891.

Decision affirmed; petition for stay denied as moot.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims:
Rental or Claim Maintenance Fees: Small Miner Exemption

Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before Aug. 31 of each year for years 1994 through 1998, and failure to pay the fee renders the claim null and void by operation of law. The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, and under 43 C.F.R. § 3833.1-7(d)(2), a claimant must file proof of the conditions for waiver by the Aug. 31 immediately preceding the assessment year for which the waiver is sought.

2. Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims:
Rental or Claim Maintenance Fees: Small Miner Exemption

The failure to record a quitclaim deed conveying a mining claim in Nevada prior to Aug. 31 did not prevent title from passing to the grantee before that date, and where the grantee failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims abandoned and void.

3. Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims:
Rental or Claim Maintenance Fees: Small Miner Exemption

To the extent that a partnership as a separate entity can qualify as a claimant, a partnership that owns more

than 10 claims cannot qualify for the small miner waiver.

APPEARANCES: Richard W. Cahoon, General Partner, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE PRICE

The Richard W. Cahoon Family Limited Partnership has appealed from the December 23, 1996, Decision of the Nevada State Office, Bureau of Land Management (BLM), declaring 16 mining claims abandoned and void for failure to file maintenance fees or qualify for waiver of payment on or before August 31, 1996. 1/ Appellant's Notice of Appeal was accompanied by a Petition for Stay that was granted by Order dated March 25, 1997. We now affirm BLM's Decision.

[1] Under 30 U.S.C. § 28f(a) (1994), the holder of an unpatented mining claim, mill site, or tunnel site is required to pay a claim maintenance fee of \$100 per claim on or before August 31 of each year for the years 1994 through 1998. Under 30 U.S.C. § 28i (1994), failure to pay the claim maintenance fee "shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law." The statute gives the Secretary discretion to waive the fee for a small miner who holds not more than 10 mining claims, mill sites, or tunnel sites, or combination thereof, on public lands and has performed assessment work required under the Mining Law of 1872. 30 U.S.C. § 28f(d)(1) (1994). The BLM has implemented this statute with a regulation that requires a claimant to file "proof of the * * * conditions for exemption * * * with the proper BLM office by the August 31 immediately preceding the assessment year for which the waiver is sought." 43 C.F.R. § 3833.1-7(d)(2).

On August 26, 1996, BLM received a maintenance fee payment waiver certification from Frances C. Pedersen listing eight mining claims, another waiver certification from Phyllis C. Southam listing eight other claims, and affidavits of assessment work for those claims. 2/ However, the filing also included two quitclaim deeds executed on August 22, 1996, by which Pedersen and Southam conveyed their claims to Appellant. The BLM determined that the transfer to Appellant was effective on August 22, 1996,

1/ The claims are the Gray Bar #2 (N MC 51326); the Jay Bird #1 through #4 (N MC 51335 through N MC 51339); the Gem #25 through #29 (N MC 51343 through N MC 51346); the Creek #2 (N MC 352838); the Creek #49 through #51 (N MC 352885 through N MC 352887); and the Creek #54 through #55 (N MC 352890 through N MC 352891).

2/ Pedersen's waiver certification listed N MC 51326, N MC 51335, N MC 51337, N MC 51339, and N MC 51343 through N MC 51345. Southam's waiver certification listed N MC 51336, N MC 51338, N MC 352838, N MC 352885 through N MC 352887, N MC 352890, and N MC 352891.

and that as the owner of 16 claims, Appellant did not qualify for the small miner exemption. Because no maintenance fees for the 16 claims were received, BLM deemed the claims forfeited.

Appellant first contends that the quitclaim deeds had not been recorded and were not "intended to be recorded until after the small miners exemption certificates were filed in the BLM office." Appellant states that the reason why the fee was not paid was that the deeds were not recorded.

[2] Nevertheless, a delay in recording the deeds would not have postponed the effective date of the transfer. Although Departmental regulation 43 C.F.R. § 3833.3(c) provides that the filing of a transfer of interest, when properly executed and recorded under State law, will be placed on the BLM records when filed with the proper BLM office, the transfer itself "will be deemed to have taken place on its effective date under State law." Nevada's recording statute requires recordation of conveyances in the appropriate county recorder's office "to operate as notice to third persons," but states that a conveyance "shall be valid and binding between the parties thereto without such record." Nev. Rev. Stat. § 111.315 (1995). The Supreme Court of Nevada has stated that statutory provisions relating to the recordation of deeds are for the protection and security of creditors and that such provisions do not prevent the passage of title by the grantor to the grantee. Allen v. Hemon, 74 Nev. 238, 328 P.2d 301, 304 (1958). Thus, Appellant's failure to record the deed prior to August 31 did not prevent title from passing to Appellant before that date, and because Appellant failed to pay the claim maintenance fee or qualify for a waiver, BLM properly declared the claims abandoned and void.

Appellant next contends that the family limited partnership "includes 4 partners, including 2 general partners, with 10% interest each and two Limited partners who own 40% each. These are individual, distinct interests. With a total of 16 claims, it is clear no participant has over ten claims."

[3] Appellant's argument concerning eligibility for the small miner waiver is unavailing for several reasons. The first reason why this argument will not prevail is that the partnership is not eligible for the waiver. The quitclaim deeds conveyed the claims not to the individual members of the partnership, but to the partnership as an entity, which as a result holds more than 10 claims. There is no evidence that the interest of each partner is limited to a certain number of specific claims, and accordingly, we conclude that the individual interest of each partner extends to all of the claims held by the partnership. Where a partnership as an entity is qualified to own claims, 3/ a partnership that owns more than 10 claims cannot qualify for the small miner exemption.

3/ See McKinley v. Wheeler, 130 U.S. 630 (1889); Owyhee Calcium Products, Inc., 72 IBLA 235, 238 (1983), aff'd, Civ. No. 83-1245 (D. Idaho Sept. 5, 1984); 1 American Law of Mining § 31.02[4] (2d ed. 1984).

Moreover, the applicable statutory provision authorizes waiver of the claim maintenance fee for a claimant who certifies that "the claimant and all related parties * * * held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands." 30 U.S.C. § 28(d)(1) (1994); accord, 43 C.F.R. § 3833.1-6(a)(1) (emphasis added). A "related party" is defined as "(A) the spouse and dependent children (as defined in section 152 of Title 26), of the claimant; and (B) a person who controls, is controlled by, or under common control with the claimant." 30 U.S.C. § 28(d)(2) (1994); accord, 43 C.F.R. § 3833.0-5(x) (emphasis added). "[T]he term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, voting trust, or a holding company or investment company, or any other means." Id.; accord, 43 C.F.R. § 3833.0-5(y). Thus, the term "related parties" may include a general partner who can exercise "control" or limited partners who are "under common control with" a person who holds the right to transfer the claim.

Where a mining claimant fails to qualify for a small miner waiver from the maintenance fee requirement, failure to pay fees in accordance with the Act and regulations results in a conclusive presumption of abandonment. Paul W. Tobeler, 131 IBLA 245, 249 (1994). Even where extenuating circumstances are asserted, BLM is without authority to excuse lack of compliance with the maintenance fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. Id. In the absence of the maintenance fee or exemption, BLM properly declared the claims abandoned and void. Harlow Corp., 135 IBLA 382 (1996); Alamo Ranch Co., 135 IBLA 61 (1996).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur:

James L. Burski
Administrative Judge

